

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : **UNDERGROUND STORAGE
TANK ENFORCEMENT**

R.L. ROGERS & SONS, INC. : **JULY 19, 2006**

FINAL DECISION

**I
SUMMARY**

A hearing was held on June 29, 2006 in this underground storage tank (UST) enforcement action. General Statutes §22a-449(g)(2). Department of Environmental Protection (DEP) staff testified and provided documentary evidence; no representative appeared for R. L. Rogers & Sons, Inc. (respondent). This hearing provided substantial evidence that the respondent's UST systems violate provisions of General Statutes §22a-449(g)(1) and that these violations are continuing. The DEP may proceed with this action, including enforcement of the requirement that the respondent pump out the contents of the affected UST systems. §22a-449(g)(1).

**II
JURISDICTION**

Owners or operators of nonresidential UST facilities must file a report with the DEP that includes information on tank construction and piping system materials and internal/external protection measures. Regs., Conn. State Agencies §22a-449(d)-1(d). In relevant part, §22a-449(g)(1) of the General Statutes provides that if the DEP Commissioner determines that a non-residential UST system is not designed, constructed, installed and operated in accordance with the provisions of 22a-449o¹ or fails to have or operate proper release detection equipment or overfill and

¹ Section 22a-449o requires that certain components of UST systems be double-walled, including piping.

spill protection measures, the Commissioner may require the owner/operator of that system to pump out its contents, place a notice on the system indicating that it cannot be used, or place a disabling device on the system that prohibits deliveries to such system. This action is called “red tagging” by the DEP. An owner/operator must be given an opportunity for a hearing no later than two business days after the DEP has “red tagged” a nonresidential UST system. §22a-449(g)(2).

III
DECISION
A
FINDINGS OF FACT

1. The respondent, a construction company, is located at 101 Dudley Street in Wallingford. Robert Rogers, Jr. is its president. (Exs. DEP-1, 3; test. S. Deshefy, 6/29/06.)

2. The respondent filed an Underground Storage Facility Notification (EPHM-6 form) with the DEP. This registration, which must be updated by owner/operators as necessary, is part of a database maintained by the DEP. This documentation shows that two of the respondent’s UST systems have unprotected bare steel piping and no leak detection devices or monitoring systems. Systems with unprotected steel, which could corrode, had to be closed before December 22, 1998.² (Exs. DEP-2, 3; test. S. Deshefy, O. Tyson, 6/29/06.)

3. DEP staff Omar Tyson inspected the respondent’s site on January 25, 2006, where he met with Robert Rogers. Tyson’s visual inspection confirmed Rogers’s admission that there was no automatic tank gauging system, required by §22a-449(d) –104, to monitor the tank inventory. Neither Tyson’s inspection nor any information shared by Rogers indicated that there were any procedures in place or systems on site, such as wells, to monitor for possible leaks or spills. Tyson’s inspection also confirmed that the UST systems were still being operated. (Test. O. Tyson, 6/29/06.)

² 2 Regs., Conn. State Agencies §22a-449(d)-1.

4. On May 30, 2006, Tyson returned to the site and “red tagged” the respondent’s UST systems. Tyson gave Rogers a Notice of Disabled UST Systems, which indicated that a hearing would be held on June 1, 2006 on the issue of whether the violation precipitating the DEP action had occurred and whether the alleged violation was continuing. Rogers did not attend the scheduled hearing on June 1; DEP staff was present. On June 23, 2006, a second notice of hearing was issued to Rogers, setting another hearing for June 29, 2006. Both notices informed their recipients to call G. Scott Deshefy to reschedule a hearing if necessary; Deshefy was not contacted before either hearing date. (Ex. DEP-1; ex. Hrg Officer -1; test. S. Deshefy, O. Tyson, 6/29/06.)

5. The DEP plans to direct the respondent to pump out the contents of both tanks and to have soils at the site tested. An investigation will be conducted of the surrounding area to ensure that there has been no discharge to soils or ground water. (Test. S. Deshefy, O. Tyson, 6/29/06.)

B ***CONCLUSION***

Evidence of the violations in this matter is clear from the DEP documentation. The registration filed by the respondent and the information in the DEP database show that the subject UST systems at the respondent’s site include piping systems that are unprotected bare steel. This documentation also fails to report the existence of any systems to monitor possible leakage or spills to prevent contamination of soils and groundwater. A DEP visual inspection of the site confirmed that there is no required electronic automated monitoring device on site. Following personal service of notices of hearing by the DEP, the respondent was twice given an opportunity to be heard in this matter; neither the respondent nor a representative for the respondent attended either hearing session or requested a hearing at another date and time. §22a-449(g)(2).

Unprotected bare steel components and the failure to install and utilize monitoring devices or

systems violate the requirements of §22a-449(g)(1). There is evidence that these violations are still occurring. As provided under §22a-449(g)(1), the DEP may direct that the respondent pump out the contents of these systems and take any other actions as authorized under relevant law.

Issued this 19th day of July, 2006, as a Final Decision of the Commissioner of the Department of Environmental Protection, by:

Janice B. Deshais, Hearing Officer

APPENDIX A
P A R T Y L I S T

FINAL DECISION

In the Matter of R.L. Rogers & Sons, Inc.

PARTY

REPRESENTED BY

UST System

R.L. Rogers & Sons, Inc.
101 Dudley Street
Wallingford, CT 06492

Owner/Operator

Robert Rogers, Jr.
10 New England Drive
Wallingford, CT 06492

Department of Environmental Protection

UST Enforcement
79 Elm Street
Hartford, CT 06106
(860) 424-3334 (x2034)

G. Scott Deshefy
Omar Tyson